

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SYRACUSE MOUNTAINS
CORPORATION,

Plaintiff,

v.

PETRÓLEOS DE VENEZUELA S.A.,

Defendant.

Civil Action No.: 21-cv-2684-VEC

**LOCAL CIV. R. 56.1 STATEMENT OF MATERIAL FACTS
IN SUPPORT OF PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rule 56.1, Plaintiff Syracuse Mountains Corporation submits this statement of material facts in support of its Motion for Summary Judgment:

I. The Parties

1. Plaintiff Syracuse Mountains Corporation (“Syracuse”) is a company incorporated under the laws of Panama. Declaration of Shayda Vance in Support of Plaintiff’s Motion for Summary Judgment (“Vance Decl.”) ¶ 2, Ex. 1 ¶ 4; Declaration of Breno Cunha in Support of Plaintiff’s Motion for Summary Judgment (“Syracuse Decl.”) ¶ 4.
2. Syracuse was formed in November 2020 by several companies that owned notes issued by Defendant Petróleos de Venezuela S.A. (“PDVSA”) prior to PDVSA’s default. Syracuse Decl. ¶ 4.
3. Those companies transferred their notes to Syracuse in exchange for a pro rata shareholding. Syracuse Decl. ¶ 4; Vance Decl. ¶ 14, Ex. 13 at 122:7-122:17.
4. Defendant PDVSA is a capital stock corporation organized under the laws of the

Bolivarian Republic of Venezuela (the “Republic”), majority-owned by the Republic. Vance Decl. ¶ 2, Ex. 1 ¶ 5; ¶ 8, Ex. 7 ¶ 5.

5. The Republic is a Foreign State as defined in 28 U.S.C. § 1603. Vance Decl. ¶ 2, Ex. 1 ¶ 5; ¶ 8, Ex. 7 ¶ 5.

6. PDVSA is therefore an agency or instrumentality of a Foreign State, as defined in 28 U.S.C. § 1603. Vance Decl. ¶ 2, Ex. 1 ¶ 5; ¶ 8, Ex. 7 ¶ 5.

II. The Notes

7. PDVSA issued notes pursuant to a series of indentures dated April 12, 2007 (the “2007 Indenture”), February 17, 2011 (the “February 2011 Indenture”), November 17, 2011 (the “November 2011 Indenture”), May 17, 2012 (the “2012 Indenture”), and November 15, 2013 (the “2013 Indenture”) (collectively the “Indentures”). Vance Decl. ¶¶ 3-7, Exs. 2-6; Syracuse Decl. ¶ 6.

8. The 2007 Indenture was entered into by and among PDVSA, PDVSA Petróleo S.A., as guarantor, The Bank of New York, as trustee, registrar and principal paying agent, and The Bank of New York (Luxembourg) S.A., as Luxembourg listing agent and paying agent. Vance Decl. ¶ 3, Ex. 2; Syracuse Decl. ¶ 7.

9. Syracuse is the beneficial owner of Notes issued under the 2007 Indenture with the SEDOL number B1VX673, in the principal amount \$28,000,000.00 bearing interest at a rate of 5.375% per year and a final maturity date of April 12, 2027 (“2027 Notes”). Vance Decl. ¶ 3, Ex. 2 p. 17; ¶ 14, Ex. 13 at 104:25-105:22, 110:18-111:10; Syracuse Decl. ¶¶ 12-14; ¶ 13, Ex. 1 pp. 3-4.

10. Interest on the 2027 Notes is payable semi-annually on April 12 and October 12 until the principal is paid. Vance Decl. ¶ 3, Ex. 2 p. 17.

11. The February 2011 Indenture was entered into by and among PDVSA, PDVSA Petróleo S.A., as guarantor, Wilmington Trust Company, as trustee, Citibank, N.A., as registrar, transfer agent and principal paying agent, and Dexia Banque Internationale à Luxembourg, Société Anonyme, as Luxembourg listing agent and paying agent. Vance Decl. ¶ 4, Ex. 3; Syracuse Decl. ¶ 8.

12. Syracuse is the beneficial owner of Notes issued under the February 2011 Indenture with the CUSIP number P7807HAM7, in the principal amount \$214,150,000.00 bearing interest at a rate of 12.75% per year and a final maturity date of February 17, 2022 (“2022 Notes”). Vance Decl. ¶ 4, Ex. 3 p. 18; ¶ 14, Ex. 13 at 104:25-105:22, 110:18-111:10; Syracuse Decl. ¶¶ 12-14; ¶ 13, Ex. 1 pp. 2-3.

13. Interest on the 2022 Notes is payable semi-annually on February 17 and August 17 until the principal is paid. Vance Decl. ¶ 4, Ex. 3 p. 18.

14. The November 2011 Indenture was entered into by and among PDVSA, PDVSA Petróleo S.A., as guarantor, Wilmington Trust Company, as trustee, Citibank, N.A., as registrar, transfer agent and principal paying agent, and Dexia Banque Internationale à Luxembourg, Société Anonyme, as Luxembourg listing agent and paying agent. Vance Decl. ¶ 5, Ex. 4; Syracuse Decl. ¶ 9.

15. Syracuse is the beneficial owner of Notes issued under the November 2011 Indenture with the CUSIP number P7807HAP0, in the principal amount \$2,000,000.00 bearing interest at a rate of 9.00% per year and a final maturity date of November 17, 2021 (“2021 Notes”). Vance Decl. ¶ 5, Ex. 4 p. 18; ¶ 14, Ex. 13 at 104:25-105:22, 110:18-111:10; Syracuse Decl. ¶¶ 12-14; ¶ 13, Ex. 1 p. 2.

16. Interest on the 2021 Notes is payable semi-annually on May 17 and November 17 until

the principal is paid. Vance Decl. ¶ 5, Ex. 4 p. 18.

17. The 2012 Indenture was entered into by and among PDVSA, PDVSA Petróleo S.A., as guarantor, Wilmington Trust Company, as trustee, Citibank, N.A., as registrar, transfer agent and principal paying agent, and Banque Internationale à Luxembourg, Société Anonyme, as Luxembourg listing agent and paying agent. Vance Decl. ¶ 6, Ex. 5; Syracuse Decl. ¶ 10.

18. Syracuse is the beneficial owner of Notes issued under the 2012 Indenture with the CUSIP number P7807HAQ8, in the principal amount \$69,150,000.00 bearing interest at a rate of 9.75% per year and a final maturity date of May 17, 2035 (“2035 Notes”). Vance Decl. ¶ 6, Ex. 5 p. 18; ¶ 14, Ex. 13 at 104:25-105:22, 110:18-111:10; Syracuse Decl. ¶¶ 12-14; ¶ 13, Ex. 1 p. 4.

19. Interest on the 2035 Notes is payable semi-annually on May 17 and November 17 until the principal is paid. Vance Decl. ¶ 6, Ex. 5 p. 18.

20. The 2013 Indenture was entered into by and among PDVSA, PDVSA Petróleo S.A., as guarantor, Law Debenture Trust Company of New York, as trustee, Citibank, N.A., as registrar, transfer agent and principal paying agent, and Banque Internationale à Luxembourg, Société Anonyme, as Luxembourg listing agent and paying agent. Vance Decl. ¶ 7, Ex. 6; Syracuse Decl. ¶ 11.

21. Syracuse is the beneficial owner of Notes issued under the 2013 Indenture with the CUSIP number P7807HAR6, in the principal amount \$20,000,000.00 bearing interest at a rate of 6.00% per year and a final maturity date of November 15, 2026 (“2026 Notes”). Vance Decl. ¶ 7, Ex. 6 pp. 18-19; ¶ 14, Ex. 13 at 104:25-105:22, 110:18-111:10; Syracuse Decl. ¶¶ 12-14; ¶ 13, Ex. 1.

22. Interest on the 2026 Notes is payable semi-annually on May 15 and November 15 until the principal is paid. Vance Decl. ¶ 7, Ex. 6 pp. 18-19.

23. Syracuse has not sold any of the five Notes since the filing of this lawsuit. Vance Decl. ¶ 14, Ex. 13 at 31:3-5; Vance Decl. ¶ 15, Ex. 14 at 46:24-47:2.

24. Syracuse is not aware of any claims that the five Notes are unenforceable or invalid, that Syracuse's acquisition of the Notes was not valid, nor is there any dispute over ownership between Syracuse and another entity. Vance Decl. ¶ 14, Ex. 13 at 144:3-145:17.

25. Under section 10.03 of each of the Indentures, New York law governs PDVSA's payment obligations concerning each of the five Notes. Vance Decl. ¶¶ 3-7, Exs. 2-6.

26. Beginning in late 2017, PDVSA stopped making interest payments on the Notes when due. Specifically, PDVSA has failed to make the following interest payments required by the Note terms:

- i. 9.00% 2021 Notes: Nov. 17, 2017, May 17, 2018, Nov. 17, 2018, May 17, 2019, Nov. 17, 2019, May 17, 2020, Nov. 17, 2020, May 17, 2021, Nov. 17, 2021, May 17, 2022, Nov. 17, 2022, and May 17, 2023
- ii. 12.75% 2022 Notes: Feb. 17, 2018, Aug. 17, 2018, Feb. 17, 2019, Aug. 17, 2019, Feb. 17, 2020, Aug. 17, 2020, Feb. 17, 2021, Aug. 17, 2021, Feb. 17, 2022, Aug. 17, 2022, and Feb. 17, 2023
- iii. 6.00% 2026 Notes: Nov. 15, 2017, May 15, 2018, Nov. 15, 2018, May 15, 2019, Nov. 15, 2019, May 15, 2020, Nov. 15, 2020, May 15, 2021, Nov. 15, 2021, May 15, 2022, Nov. 15, 2022, and May 15,

- 2023
- iv. 5.375% 2027 Notes: Apr. 12, 2018, Oct. 12, 2018, Apr. 12, 2019, Oct. 12, 2019, Apr. 12, 2020, and Oct. 12, 2020, Apr. 12, 2021, and Oct. 12, 2021, Apr. 12, 2022, and Oct. 12, 2022, and Apr. 12, 2023
- v. 9.75% 2035 Notes: Nov. 17, 2017, May 17, 2018, Nov. 17, 2018, May 17, 2019, Nov. 17, 2019, May 17, 2020, and Nov. 17, 2020, May 17, 2021, Nov. 17, 2021, May 17, 2022, Nov. 17, 2022, and May 17, 2023

Syracuse Decl. ¶ 15; Vance Decl. ¶ 14, Ex. 13 at 143:19-144:2, 145:18-146:5.

27. The 9.00% 2021 Notes mature in equal installments on November 17, 2019, November 17, 2020, and November 17, 2021. Syracuse Decl. ¶ 16; Vance Decl. ¶ 5, Ex. 4 pp. 18-19.

28. PDVSA has failed to make the required principal payments on the 9.00% 2021 Notes to Syracuse on November 17, 2019, November 17, 2020, and November 17, 2021. Syracuse Decl. ¶ 16.

29. The 12.75% 2022 Notes mature in equal installments on February 17, 2020, February 17, 2021, and February 17, 2022. Syracuse Decl. ¶ 17; Vance Decl. ¶ 4, Ex. 3 p. 18.

30. PDVSA failed to make the required principal payments on the 12.75% 2022 Notes to Syracuse on February 17, 2020, February 17, 2021, and February 17, 2022. Syracuse Decl. ¶ 17.

III. Waiver of Sovereign Immunity

31. PDVSA has explicitly and unconditionally waived sovereign immunity under Section

10.10(a) and (c) of each of the Indentures with respect to actions arising out of or based on the Indentures themselves, by holders of the Notes issued thereunder. Vance Decl. ¶¶ 3-7, Exs. 2-6.

32. PDVSA also admitted in its Answer to the Complaint “that it waived the defense of sovereign immunity to jurisdiction in the Indentures[.]” Vance Decl. ¶ 8, Ex. 7 at ¶ 6.

IV. Authorization to Sue

33. On March 18, 2021, Cede & Co., as nominee of The Depository Trust Company and holder of record of the 2021 Notes, provided written authorization permitting Syracuse “to take any and all actions and exercise any and all rights and remedies that Cede & Co. as the holder of record of the USD 2,000,000 principal amount of the Notes is entitled to take[.]” Vance Decl. ¶9, Ex. 8.

34. On March 18, 2021, Cede & Co., as nominee of The Depository Trust Company and holder of record of the 2022 Notes, provided written authorization permitting Syracuse “to take any and all actions and exercise any and all rights and remedies that Cede & Co. as the holder of record of the USD 214,150,000 principal amount of the Notes is entitled to take[.]” Vance Decl. ¶ 10, Ex. 9.

35. On March 18, 2021, Cede & Co., as nominee of The Depository Trust Company and holder of record of the 2026 Notes, provided written authorization permitting Syracuse “to take any and all actions and exercise any and all rights and remedies that Cede & Co. as the holder of record of the USD 20,000,000 principal amount of the Notes is entitled to take[.]” Vance Decl. ¶ 11, Ex. 10.

36. On March 26, 2021, Safra Securities LLC (“SSL”), the custodian for Safra National Bank of New York and holder of record of the 2027 Notes, provided written authorization permitting Syracuse “to take any and all actions and exercise any and all rights and remedies that SSL, as

the holder of the Notes before Clearstream Banking S.A. would be entitled to take[.]” Vance Decl. ¶ 12, Ex. 11.

37. On March 18, 2021, Cede & Co., as nominee of The Depository Trust Company and holder of record of the 2035 Notes, provided written authorization permitting Syracuse “to take any and all actions and exercise any and all rights and remedies that Cede & Co. as the holder of record of the USD 69,150,000 principal amount of the Notes is entitled to take[.]” Vance Decl. ¶ 13, Ex. 12.

V. This Action

38. Syracuse filed this action to enforce its contractual rights on March 29, 2021. Vance Decl. ¶ 2, Ex. 1.

39. Discovery in this matter lasted eighteen months. Vance Decl. ¶ 16.

40. Discovery in this matter included two sets of document requests from PDVSA to Syracuse—pursuant to which Syracuse produced 219 responsive documents across seven productions. Vance Decl. ¶ 16.

41. Discovery in this matter also included requests from PDVSA for third-party discovery from eleven international banks and institutions and four individuals. Vance Decl. ¶ 16.

42. Discovery in this matter also included the taking of six depositions by PDVSA. Vance Decl. ¶ 16.

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Respectfully submitted,

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s/

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